

# EXHIBIT 3

**In The Matter Of:**

*METRO FUEL, LLC v.  
CITY OF NEW YORK*

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***KERRY GOULD-SCHMIT***

*June 10, 2008*

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**GOULD-SCHMIT, KERRY - Vol. 1**

1 KERRY GOULD-SCHMIT

2 A Well, we allowed ten, and we asked  
3 for commercial districts, and it was just a year  
4 run pilot.

5 Q Your understanding is that pursuant  
6 to Section 4.4.2, that limited ten sign pilot has  
7 to comply with the electronic media restrictions  
8 contained in the Zoning Resolution?

9 A If it became a permanent program.

10 Q So, your understanding is that  
11 Section 4.4.2 does not apply to pilots?

12 A That is my understanding.

13 Q Just to be clear, it doesn't say  
14 that, does it?

15 A No, it doesn't say that.

16 Q You would agree with me, wouldn't  
17 you, that Section 4.4.2 also says that although  
18 Cemusa's street furniture is subject to the Zoning  
19 Resolution's electronic media restrictions, the  
20 street furniture is not subject to the Zoning  
21 Resolution's restrictions on backlighting?

22 A I didn't understand the question. I  
23 got lost somewhere in there.

24 Q Sure. Let me rephrase it, it was a  
25 bit awkward.

1 KERRY GOULD-SCHMIT

2 Q Did the City ever consider doing  
3 what you just suggested, namely foregoing its  
4 share of the revenue generated by advertising  
5 signs in exchange for requiring a franchisee to  
6 have less advertising?

7 A I do not believe that was thought of  
8 as a business model. There were other business  
9 people thinking about this though, but...

10 Q Who were the other people thinking  
11 about it?

12 A I mean Joe Perillo.

13 Q Is it fair to say, generally, that  
14 Joe Perillo was focused on the revenue side of the  
15 street furniture franchise more than he was  
16 focused on the design/attractiveness side?

17 A Yes, I would say Joe has a different  
18 take from what his job was with the City. We are  
19 an operating agency, we had a very different take  
20 as to what we wanted to achieve with the program.

21 Q Given the role that Joe played, it  
22 doesn't seem particularly likely that Joe would  
23 have been thinking about advocating having the  
24 City take less revenue in order to reduce the  
25 amount of advertising?

1 KERRY GOULD-SCHMIT

2 MS. NEUFELD: Objection.

3 A Yes, and I have no idea what Joe  
4 thought or wanted to achieve.

5 Can I just add, I don't think that  
6 was physically possible to eliminate the  
7 advertising, in thinking about this whole program.  
8 I mean, it is \$100 million. It is free  
9 replacement whenever we needed it for twenty  
10 years, ongoing maintenance. I mean, it's a big  
11 financial commitment for a company to do this.

12 Q I totally understand why it would  
13 not have made sense for the City to think that it  
14 could get somebody to build out a \$100 million  
15 worth of street furniture and maintenance without  
16 allowing advertising.

17 I'm just wondering about the amount  
18 of advertising and I just want to make sure I  
19 understand you correctly, that in going forward  
20 with the street furniture franchise in 2004, give  
21 or take, nobody at the City, to your knowledge,  
22 considered the possibility of scaling back on the  
23 amount of permissible advertising, and foregoing  
24 some of the revenue or all of the revenue  
25 generated by the City in order to achieve that

1 KERRY GOULD-SCHMIT

2 goal?

3 A I would say, yes, that's my  
4 understanding. We did not consider reducing the  
5 advertising.

6 MR. HECKER: Let me mark this as  
7 Exhibit 31.

8 (The above described document was  
9 marked Plaintiff's Exhibit 31 for  
10 identification, as of this date.)

11 REDACTED PURSUANT TO THE COURT'S JULY 15, 2008 ORDER AND THE PARTIES' MARCH 27, 2008 PROTECTIVE ORDER



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1 KERRY GOULD-SCHMIT

2 A Yes.

3 Q And that's how Cemusa came back and  
4 beat NBC Decaux by, approximately, 20 points?

5 A Yes.

6 Q 20 points out of 900 isn't exactly a  
7 huge margin of victory, is it?

8 A No.

9 Q It was a fairly close competition?

10 A Yes, it was.

11 Q NBC almost won?

12 A It was close.

13 Q And the reason why Cemusa beat NBC  
14 Decaux is because of the strength of its  
15 compensation proposal?

16 A Yes.

17 Q Even though its design was inferior?

18 A Yes.

19 Q And if the design was inferior, even  
20 in the BAFO phase, after it had gotten feedback  
21 from the committee?

22 A Yes.

23 MR. HECKER: Mark this as 37.

24 (The above described document was  
25 marked Plaintiff's Exhibit 37 for

1 KERRY GOULD-SCHMIT

2 forth page is Clear Channel's scoring and the  
3 fifth page is Viacom's scoring, right?

4 A Yes.

5 Q Exhibit 39 does the same thing for  
6 the post BAFO round of scoring that was tabulated  
7 in, approximately, July of 2005, right?

8 A Yes.

9 Q And this is only a three-page  
10 document because there were only three BAFO  
11 finalists, right?

12 A Yes.

13 Q The first page is Cemusa's post BAFO  
14 scoring and the second page is NBC's post BAFO  
15 scoring and the third page is Van Wagner's post  
16 BAFO scoring, right?

17 A Yes.

18 MR. HECKER: Let me mark yet another  
19 document.

20 (The above described document was  
21 marked Plaintiff's Exhibit 40 for  
22 identification, as of this date.)

23 Q Kerry, Exhibit 40 is another chart  
24 that I have prepared that you've never seen  
25 before.

1 KERRY GOULD-SCHMIT

2 Again, I want to be very clear, I'm  
3 not asking you to agree with or confirm my math.  
4 I'm asking you to accept that the math that's here  
5 is correct and accurate.

6 I want to take a minute to explain  
7 to you what I've done here with this chart.  
8 Again, the top half of Exhibit 40 relates to the  
9 initial round and the bottom half of Exhibit 40  
10 relates to the post BAFO round.

11 Are you with me so far?

12 A Yes.

13 Q I've focused only on each of the six  
14 categories within 3D, I, E, the categories that  
15 are most expressly about design, leaving aside my  
16 understanding that you also think that the  
17 maintenance categories have something to do with  
18 aesthetics. I'm focused on the specific design  
19 categories here.

20 Do you see that?

21 A Yes.

22 Q Next to each row, D1 through D6 I  
23 put the total number of points that each company  
24 could have gotten for each category in  
25 parentheses.

1 KERRY GOULD-SCHMIT

2 Do you see that?

3 A Yes.

4 Q And what I've done in each cell of  
5 this chart, I've put down the average score that  
6 each company got for each category averaging the  
7 seven scores of the individual Selection Committee  
8 members together.

9 Does that make sense?

10 A Yes.

11 Q And again, I'm not asking you to  
12 verify the math. I'm quite sure that Sheryl  
13 and/or Christina will let me know at the  
14 appropriate juncture if I have erred.

15 I want to understand if you  
16 understand conceptually what this chart purports  
17 to show.

18 A Yes, I do.

19 Q You'll see, according to this chart,  
20 Cemusa received a 2.1 out of 6 in category D1.

21 Do you see that?

22 A Yes.

23 Q This is the category that relates to  
24 citywide design scheme/aesthetics, right? You can  
25 look back to Exhibit 37.

1 KERRY GOULD-SCHMIT

2 A Right.

3 Q You would agree with me from a  
4 design perspective, that's a very important  
5 category?

6 MS. NEUFELD: Objection.

7 Q You agree with that, don't you?

8 MS. NEUFELD: Objection.

9 A Yes, one of many.

10 Q There are only six, right?

11 A Yeah, I think -- I mean, there are  
12 six, obviously the most important of the group  
13 are, I would say, the ones worth three are less  
14 important.

15 Q D1 goes to the overall aesthetic  
16 appeal of the design proposal on a citywide basis?

17 A Yes, I think that's important.

18 Q That's what it does and it's  
19 important, right?

20 A Correct.

21 Q And they got a 2.14 out of 6 in that  
22 category, right?

23 A Prior to BAFO, yes.

24 Q Cemusa and Van Wagner were both in  
25 the five and a half range, right?

1 KERRY GOULD-SCHMIT

2 A Yes.

3 Q I would go through each of these one  
4 by one, but wouldn't you agree with me that, again  
5 assuming my math is correct, this chart reflects  
6 and confirms your memory that NBC Decaux and Van  
7 Wagner scored much better than Cemusa did in all  
8 of the design categories?

9 A In the D section of the design  
10 categories, yes. If you run this, I think, also  
11 for E, you might see Cemusa gaining points there,  
12 because I do believe -- the maintenance and all of  
13 that.

14 Q You're focusing on D right now?

15 A I view D and E as the design  
16 categories. As far as D, these specific sets,  
17 absolutely, Decaux and Van Wagner perform the  
18 best.

19 Q And Cemusa performed the worst out  
20 of all five?

21 A Prior to the BAFO, yes.

22 Q Cemusa performed the worst among the  
23 three BAFO finalists, right?

24 A In the D categories, yes, they are  
25 down by 6 points -- 7 points.

1 KERRY GOULD-SCHMIT

2 MS. NEUFELD: Objection.

3 Q Cemusa had the lowest D scores?

4 A Yes, the spread was not as large in  
5 the BAFO, but, yes.

6 Q You would agree with me that even  
7 though the spread wasn't as large in the BAFO, the  
8 spread was, nonetheless, still significant,  
9 correct?

10 MS. NEUFELD: Objection.

11 A I wouldn't say significant, no, 7  
12 points is what I'm seeing.

13 Q Out of 30. The D category is worth  
14 a total of 30 points, right?

15 A Is that the D or the phase --

16 Q There are six categories within D,  
17 D1 through 6, right?

18 A Yes, well -- sure, it's significant.  
19 7 points is significant.

20 Q You can put that aside. I do plan  
21 to come back to the E category later.

22 When I pointed you earlier this  
23 afternoon to the last paragraph of your  
24 Declaration and the language contained therein,  
25 I'm going to paraphrase what I believe you said.

1 KERRY GOULD-SCHMIT

2 that award about?

3 A Each year the City, the Art  
4 Commissions gives awards for public projects, for  
5 design excellence. Street furniture got one in  
6 '05.

7 Q I believe, and I know you will  
8 correct me if I'm wrong, that you used the number  
9 \$100 million earlier in describing vaguely and  
10 approximately how much this franchise was going to  
11 cost, right?

12 A Yes.

13 Q Am I correct that that \$100 million  
14 number, which I know, obviously, is not an  
15 accurate figure, is your approximation on an order  
16 of magnitude basis of how much it would cost both  
17 to build out the street furniture and to maintain  
18 it?

19 A No, that is the designing cost,  
20 construction cost, installation cost.

21 Q \$100 million?

22 A Yeah.

23 Q I thought I had seen some reference  
24 in documents to the number of \$55 million.

25 Does that ring a bell for you?



1 KERRY GOULD-SCHMIT  
2 disagree.

3 The amount of money that Cemusa  
4 thinks it's going to make on this contract is way,  
5 way more than it's going to cost them to build out  
6 the newsstands and maintain them for twenty years.

7 Would you agree with that?

8 MS. NEUFELD: Objection.

9 A Yes.

10 Q The difference between being able to  
11 place advertising signs on the newsstands and not  
12 being able to place advertising signs on the  
13 newsstands is not the difference between this deal  
14 being profitable for Cemusa or not profitable for  
15 Cemusa, right?

16 MS. NEUFELD: Objection.

17 A Could you just repeat that?

18 MR. HECKER: Read it back.

19 (The question requested was read  
20 back by the reporter.)

21 A I agree, the deal would be  
22 profitable for Cemusa, less profitable, but still  
23 profitable.

24 Q I know we don't have a crystal ball,  
25 but based on your practical experience, would this

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2 the bidders to placing advertising on the bus  
3 shelters which had already been there, but not let  
4 them put advertising on newsstands which had never  
5 been there?

6 A I don't recall. I really don't  
7 recall, that was a long time ago. There was a lot  
8 of discussion about the newsstands, so...

9 Q Can you take a look at Paragraph 35  
10 of your Declaration. It says here that during the  
11 evaluation process, of which you were an integral  
12 part, the City carefully considered the aesthetics  
13 and functionality and adaptability of the proposed  
14 street furniture to various environments of the  
15 City of New York, right?

16 A Yes.

17 Q The City did not similarly consider  
18 the aesthetic impact of advertising signs on  
19 various environments in the City of New York,  
20 right?

21 A We did not.

22 Q And the result of the careful  
23 consideration that you gave to the aesthetics,  
24 functionality and adaptability of the proposed  
25 street furniture to various environments of the

1 KERRY GOULD-SCHMIT

2 MR. HECKER: Why don't we take a  
3 five minute break.

4 (Whereupon, at this point in the  
5 proceedings there was a recess, after which  
6 the deposition continued as follows:)

7 MR. HECKER: Back on the record.

8 Q Kerry, I just want to talk a little  
9 more about a subject that we already talked about  
10 a little earlier in the afternoon, namely what  
11 you, meaning the City, relied on in going forward  
12 with the 2004 round, in terms of what had happened  
13 in 1996.

14 A Okay.

15 Q We talked about some of the  
16 documents that you've relied on. You relied on  
17 Exhibit 7, which is the Environmental Assessment  
18 Statement, right?

19 A Yes.

20 Q You relied on Exhibit 13, which is  
21 the City Planning Commission Report, right?

22 A Yes.

23 Q You relied especially on Plaintiff's  
24 29, which is this subsequent document that was  
25 generated that reflects some of the changes that

1 KERRY GOULD-SCHMIT

2 happened during the process, right?

3 A Yes.

4 Q I can't ask you to testify under  
5 oath those are all the documents that you've seen,  
6 but is it fair to say that those are the main  
7 documents that you recall relying on in  
8 determining what had been decided in 1996 and why?

9 A Yes.

10 Q Can you think of other significant  
11 documents, as you sit here today, that you recall  
12 relying on to the extent that you relied on these  
13 documents?

14 A Yes. The RFP itself, as well as  
15 it's amendments.

16 Q Fair enough. So those three  
17 documents, Exhibit 7, 13 and 29, plus the 1997 RFP  
18 and its exhibits.

19 Can you recall any other significant  
20 paperwork that the City relied on in determining  
21 what had been decided in 1996 and why?

22 A No.

23 Q You testified about some of the  
24 people that various folks at the City talked to  
25 about what had happened in 1996. One of the

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2 better for neighborhood character or better for  
3 traffic safety or better for the built  
4 environment, but rather that it was better for the  
5 City financially?

6 A It was better -- we didn't see -- we  
7 didn't see it any differently -- yes, we were  
8 putting the back lit panels out there and they  
9 weren't having a negative impact on all of those  
10 things, we viewed this as that.

11 Q I don't think you're being at all  
12 evasive. I think your answers are not clear.

13 I'm looking at what the court  
14 reporter is writing, and I'm trying to get a clean  
15 answer to my question, if I can. I think you can  
16 answer this yes or no, and if you can't, try to  
17 explain to me why you can't.

18 Isn't it fair to say that the City  
19 decided to allow Cemusa to place scroller  
20 advertising on the street furniture solely because  
21 the City wanted to make money doing so, and not  
22 because of any aesthetic, neighborhood character  
23 or built environment considerations?

24 MS. NEUFELD: Objection.

25 A I still -- okay, I think it's not a

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2 yes or no, because we made a decision that was  
3 partially based on money, but we didn't think we  
4 were having a negative impact any further than  
5 with -- with an electronic media it would be --

6 Q I understand you didn't think you  
7 were doing any harm to the environment.

8 One reason you did it was for the  
9 money, right?

10 A Yes.

11 Q What other reasons did you do it?

12 A I don't have another reason.

13 Q You would agree that the only reason  
14 the City allowed Cemusa to put scrollers on its  
15 street furniture advertising is because the City  
16 wanted to make money doing so?

17 A Sure, yes. I want to add, all the  
18 three proposals had scrollers in their BAFOs. It  
19 wasn't an exclusive Cemusa thing.

20 Q If the City had decided to go with  
21 one of the other franchisees, it would have let  
22 them have scrollers too?

23 A Yes.

24 Q And it would have done so for one  
25 reason and one reason only, to make money, right?